

(5) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a DFAS contract is considered a disclosure within DFAS. The contractor is considered the agent of DFAS when receiving and maintaining the records for the agency.

### Subpart B—Systems of Records

#### § 324.5 General information.

(a) The provisions of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) apply to all DFAS systems of records. DFAS Privacy Act Program Procedural Rules, DFAS Exemption Rules and System of Record Notices are the three types of documents relating to the Privacy Act Program that must be published in the FEDERAL REGISTER.

(b) A system of records used to retrieve records by a name or some other personal identifier of an individual must be under DFAS control for consideration under this regulation. DFAS will maintain only those Systems of Records that have been described through notices published in the FEDERAL REGISTER.

(1) *First amendment guarantee.* No records will be maintained that describe how individuals exercise their rights guaranteed by the First Amendment unless maintenance of the record is expressly authorized by Statute, the individual or for an authorized law enforcement purpose.

(2) *Conflicts.* In case of conflict, the provisions of DoD 5400.11-R take precedence over this supplement or any DFAS directive or procedure concerning the collection, maintenance, use or disclosure of information from individual records.

(3) *Record system notices.* Record system notices are published in the FEDERAL REGISTER as notices and are not subject to the rule making procedures. The public must be given 30 days to comment on any proposed routine uses prior to implementing the system of record.

(4) *Amendments.* Amendments to system notices are submitted in the same manner as the original notices.

#### § 324.6 Procedural rules.

DFAS procedural rules (regulations having a substantial and direct impact on the public) must be published in the FEDERAL REGISTER first as a proposed rule to allow for public comment and then as a final rule. Procedural rules will be submitted through the appropriate DFAS Privacy Act Officer to the Department of Defense Privacy Office. Appendix B to this part provides the correct format. Guidance may be obtained from the DFAS-HQ and DFAS Center Records Managers on the preparation of procedural rules for publication.

#### § 324.7 Exemption rules.

(a) *Submitting proposed exemption rules.* Each proposed exemption rule submitted for publication in the FEDERAL REGISTER must contain: The agency identification and name of the record system for which an exemption will be established; The subsection(s) of the Privacy Act which grants the agency authority to claim an exemption for the system; The particular subsection(s) of the Privacy Act from which the system will be exempt; and the reasons why an exemption from the particular subsection identified in the preceding subparagraph is being claimed. No exemption to all provisions of the Privacy Act for any System of records will be granted. Only the Director, DFAS may make a determination that an exemption should be established for a system of record.

(b) *Submitting exemption rules for publication.* Exemption rules must be published in the FEDERAL REGISTER first as proposed rules to allow for public comment, then as final rules. No system of records shall be exempt from any provision of the Privacy Act until the exemption rule has been published in the FEDERAL REGISTER as a final rule. The DFAS Privacy Act Officer will submit proposed exemption rules, in proper format, to the Defense Privacy Office, for review and submission to the FEDERAL REGISTER for publication. Amendments to exemption rules are submitted in the same manner as the original exemption rules.

(c) *Exemption for classified records.* Any record in a system of records maintained by the Defense Finance and